

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA]

- against -]

ARMANDO BOTTA]

05CR30002-MAP

MOTION IN LIMINE TO PRECLUDE USE OF
TRANSCRIPTS BY JURY

Now comes the defendant, Armando Botta, by and through his attorney, Lori H. Levinson, hereby moves, pursuant to Federal Rules of Criminal Procedure 12(e) and Federal Rules of Evidence Rule 403 that this Honorable Court preclude the government from using, or permitting the jury to use a transcript of a meetings between Armando Botta and Leone Daniele on October 6, 2001 at trial.

As grounds therefore, the Defendant states that although transcripts of recorded conversations are generally allowed as an aid to the jury, *see e.g., United States v. Carbone*, 798 F.2d 21, 26 (1st Cir. 1986), where the probative value of a transcript is substantially outweighed by the danger of unfair prejudice, exclusion is warranted. *United States v. Rengifo*, 789 F.2d 975, (1st Cir. 1986).

In the videotape and audiotape of an October 6, 2001 meeting, there are portions where the words being spoken cannot be understood. At various parts of the transcript prepared by the government, the fact that a word or words cannot be understood is noted by having the word "inaudible" appear in the written transcript.

The Defendant claims that a line that has been attributed to him has been inaccurately transcribed by the government. Because of the inaudibility of that portion of the conversation, the Defendant is unable to supply an alternative transcription. Specifically, in the transcription of an October 6, 2001 meeting between Leone Daniele and Armando Botta, the government purports the beginning of the conversation to be:

Cooperating Witness: (Unintelligible) okay? (Unintelligible) Whatta you gonna muscle me that ah if I say no?

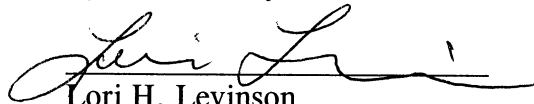
Armando Botta: (Unintelligible) You know I gotta

Counsel for the Defendant and the Defendant have reviewed the video and audio tapes of that portion of the conversation, and cannot agree that the words attributed to Mr. Botta are in fact what has been said. Accordingly, the Defendant submits that the second line of the transcript, which the government attributes to Mr. Botta, be replaced with "inaudible," as are similarly inaudible parts of that and other conversations.

Because the probative value of allowing the jury to see the transcript of what appears to be inaudible conversation would be substantially outweighed by its prejudicial effect, this Court should order the government to amend the proposed transcript.

Respectfully submitted,
ARMANDO BOTTA

By His Attorney

A handwritten signature in black ink, appearing to read "Lori Levinson", written over a horizontal line.

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Dated: June 12, 2006

DATE OF CONSENSUAL MONITORING: 10/06/01

TAPE # 10

281A-BS-81297

PARTICIPANTS: Cooperating Witness
Armando Botta

PRELIMINARY DRAFT

SUMMARY: Botta tells Cooperating Witness Frankie tells him to come up and see him and report back to him if Cooperating Witness does not pay. Botta tells Cooperating Witness he does not like talking on the telephone. Cooperating Witness pays Botta.

(TELEVISION AUDIO IN BACKGROUND)

Cooperating Witness: (Unintelligible) okay? (Unintelligible) Whatta you gonna muscle me that ah if I say no?.

Armando Botta: (Unintelligible) You know I gotta

Cooperating Witness: I got obligations.

Armando Botta: I gotta you know

Cooperating Witness: If I say no that I can't make it whatta you why do you gotta say ya?

Armando Botta: Cuz I, I have to commit and I have to come up here I don't like talking on my phone. I don't like talking on my phone I hate talking on my phone. I don't like it I mean (Unintelligible)

Cooperating Witness: I didn't say nothing I say can I see you Tuesday? And you just say I can't.

Armando Botta: I gotta come up Frankie will tell me you go up there and see him. He don't give it to you come back to me. I mean that, I'm just you know.

Cooperating Witness: Here you go. Take it. Okay?

Armando Botta: You have no hard feelings with me?

Cooperating Witness: No not at all buddy. Every thing will come down pretty soon. Okay buddy.(Unintelligible)